

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROBERT BERG,
Plaintiff

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vs.

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Case No. 6:19-cv-418-JDK

M&F WESTERN PRODUCTS, INC.,
Defendant.

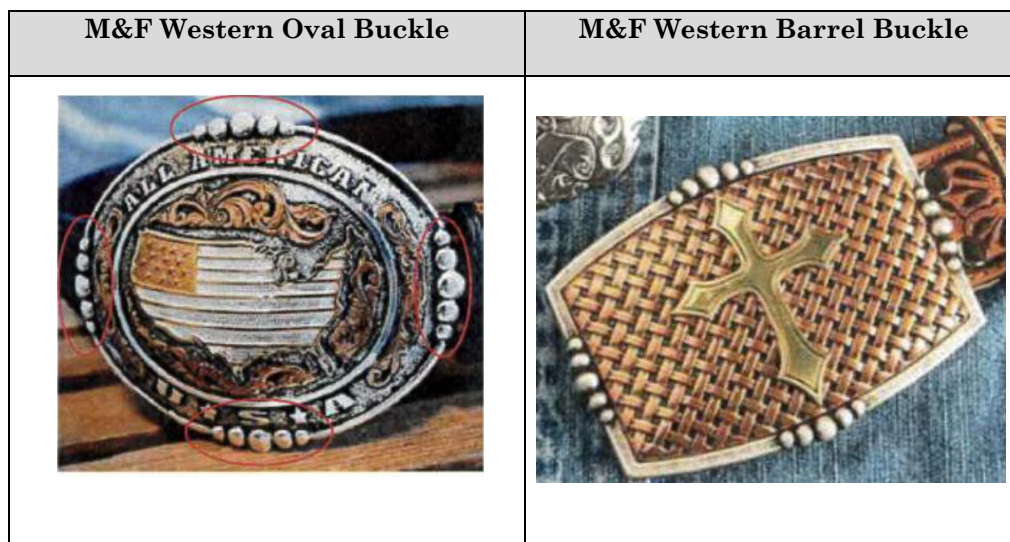
**DECLARATION OF C. KRAFT IN SUPPORT OF M&F WESTERN'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

I, Cary Kraft, declare as follows:

1. I submit this Declaration in support of M&F Western's Motion for Partial Summary Judgment regarding Plaintiff's claims of copyright infringement pertaining to Copyright Registration No. VA 1-159-548 ("the Buckle Registration").
2. I am currently employed by M&F Western Products, Inc. in the position of designer in Trubuco Canyon, California. I have worked at M&F Western since 2002 in this position. As discussed below, I have been a jewelry designer for more than 45 years and am knowledgeable about the matters discussed herein. If called as a witness, I could and would testify competently to the matters set forth in this Declaration.
3. Prior to joining M&F Western, I worked as a jewelry designer and silversmith. I was primarily self-taught in jewelry design and silver smith workmanship. I was the designer of belts and belt buckles for a company known as Lazy Day Leather from 1974 to 1981.
4. In 1977, I was awarded the American Designer Award for Western Belts by the prestigious organization known then as Leather Industries of America. A true and correct copy of the




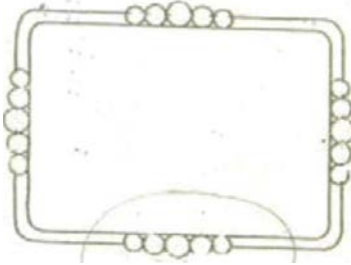
program from the 1977 Leather Industries of America Award Presentation listing me as the winner in the Men's Belts category is attached hereto as **Exhibit A**.

5. Lazy Day's last place of business was in San Antonio, Texas 1981. After that I was a jewelry and belt designer for several of New York City's top wholesalers, Infinity Jewelry and Melmar Plastics from 1983-1986. From 1986-1991, I worked as a designer for a major private label, Circa Corp. based out of San Francisco, California. From 1991 to 2002, I was a designer of western products for Leegin Creative Leather Goods, Inc. based out of City of Industry, California. From 2002 until present I have been working under an exclusive design contract with M&F Western for western style designs to include jewelry, belt buckles, belts, wallets, handbags, cell phone cases and other miscellaneous items.
6. I understand that the Plaintiff accuses two of M&F Western's belt buckles of infringing his copyright in the Buckle Registration. In particular, I understand that the accused products are an oval-shaped buckle and a barrel-shaped buckle each with a series of five tapered beads along the four compass points of the buckle, as shown below:



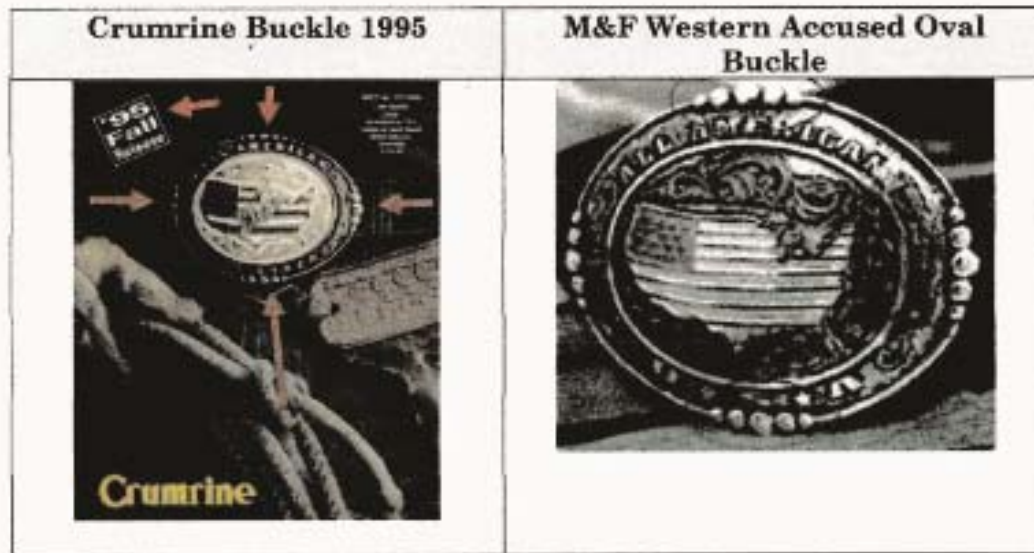
7. I am the designer of the barrel belt buckle above.

8. I understand that Plaintiff does not accuse the remaining aspects of M&F Western's designs of infringing his copyright, and that his Buckle Design asserted in this case is limited to a series of five tapered beads along the compass points of a buckle as shown below:

Plaintiff's Asserted Registration	Plaintiff's Asserted Design
 COPY OF DEPOSIT VA 1-159-548	
 COPY OF DEPOSIT VA 1-159-548	

9. I also understand that Plaintiff's Copyright Registration for the Buckle Design claims a creation date of 2002 and a publication date of June 1, 2002.
10. As a starting point, the tapered beads Plaintiff claims in his Buckle Design are very common in the Western buckle and jewelry industry and have been used by many different designers and various companies throughout the years dating back for decades, to well before 2002 when Plaintiff claims he created his Buckle Design.

11. The M&F Western designs accused of infringement in this case both use the same series of five tapered beads included in the Crumrine Buckle.



12. My barrel buckle design uses the same beaded edging as the Crumrine Buckle. True and correct copies of Corel files showing my design work for this buckle are attached hereto as **Exhibit B**. I created this particular barrel buckle design in 2015.

13. I was not aware of the Buckle Registration at the time I created the M&F barrel buckle that is accused of infringing. I only learned of the Buckle Registration after this lawsuit was filed.

14. I did not copy the Plaintiff's design.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

Signed on this 9th day of June 2020, at 8:43 AM.

By: Cary Kraft
Cary Kraft

CERTIFICATE OF SERVICE

I certify that on June 12, 2020, the foregoing was filed with the Court's electronic filing system which served a copy on all counsel of record.




Kirstin E. Larson

EXHIBIT A

LEATHER INDUSTRIES OF AMERICA

AWARD PRESENTATION



AMERICAN DESIGNER AWARDS are presented by Leather Industries of America to the nation's outstanding designers for contributions to the leather and leather-using industries in creating and popularizing designs which make leather products of quality and fashion available to the mass market.



RECIPIENTS OF LIA AMERICAN DESIGNER AWARDS FOR FOOTWEAR

PRESENTED MARCH 16, 1977
THE MARRIOTT MOTOR HOTEL
ST. LOUIS, MISSOURI

Women's Shoes:	
Earl L. Katz Encore Shoe Corp.	Alin B. Fels Norwoc Shoe Co. Division of SCOA Industries
James M. Katz Encore Shoe Corp.	S. Bernard Weiner Red Cross Shoe Division The United States Shoe Corp.
Albert Charette Encore Shoe Corp.	
Men's Shoes:	
Egon F. Clauer Allen-Edmonds Shoe Corp.	Herbert Brenner Bermuda Casuals
	Duane L. Miller Mason Shoe Mfg. Co.
Children's Shoes:	
John T. Badorf Badorf Shoe Co., Inc.	Robert L. Grayson Sylvania Shoe Mfg. Corp.
Boots:	
Michael Brooks The Wm. Brooks Shoe Co.	Herman Swartz Timberland Footwear, Inc.
Richard O'Connell Wrangler Boots Div. of Blue Bell, Inc.	Sidney Swartz Timberland Footwear, Inc.

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RECIPIENTS OF LIA AMERICAN DESIGNER AWARDS FOR HANDBAGS, BELTS AND PERSONAL LEATHER GOODS

PRESENTED MARCH 16, 1977
THE MARRIOTT MOTOR HOTEL
ST. LOUIS, MISSOURI

Handbags:	
Michael Gordon Koret, Inc.	Ruth Saltz Ruth Saltz Designs
Women's Belts:	
Belle Calderon Nathan Calderon Belts	Murray L. Nathan Calderon Belts
Men's Belts:	
Al Goldstein Swank, Inc.	John E. Hirsch Swank, Inc.
Western Belts:	
Cary Kraft Lazy Day Belts	
Personal Leather Goods:	
Orsino H. Bosca Hugo Bosca Co.	Norman Kays Kenton Leather Products
	George Smallman Kenton Leather Products

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CARY KRAFT
Lazy Day Belts

Cary Kraft has worked in various media artistically—from a child's mud sculpture to contemporary leather designs. His leather work began six years ago with a friend who owned a boutique in California. This resulted in a partnership, producing leather belts, purses and other articles for sale.

Mr. Kraft then attended Cabrillo College in Aptos, majoring in art and jewelry casting. For several years, he produced and sold jewelry at fairs, flea markets and shops, before joining Lazy Day in Santa Cruz. He worked in various departments, and also designed and produced embossing tools.

Cary Kraft became chief designer on January 1, 1976. He states: "My goal in design has been to create a tasteful line in keeping with fashion trends and traditional looks."

EXHIBIT B

